IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.210 of 1995
Date of decision:6.11.2006

The Commissioner of Income Tax, Patiala

....Petitioner

versus

M/s. Punjab State Cooperative Supply & Marketing Federation, Chandigarh.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.
Mr. ML Garg, Advocate, for the respondent.

JUDGMENT:

Following questions of law have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal'), arising out of its order dated 30.7.1993 in ITA No.49 of 1987, for the assessment year 1972-73:-

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the share income derived by the assessee from Punjab Fertilizers, Ludhiana, was to be included in the gross total income of the assessee before allowing deductions under section 80P(2) (a) of the Income Tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) that deduction claimed by the

assessee under section 80P (2) could be allowed by a rectification order under section 154 of the Income Tax Act, 1961?"

The assessee derived income from its business activities and also from share income from Punjab Fertilizers, Ludhiana. The Assessing Officer while giving appeal effect to the order passed by the Tribunal did not take into consideration share income from Punjab Fertilizers as part of gross total income while granting deduction under section 80P of the Act. Application for rectification filed by the assessee to correct the error was rejected. The appellate authority directed the Assessing Officer to include the share income in the gross total income. The revenue filed appeal before the Tribunal, which has been dismissed.

We have heard learned counsel for the revenue and perused the findings recorded.

Learned counsel for the revenue submitted that the appellate authority and the Tribunal erred in including share income of the assessee also in addition to business income in the gross total income for the purposes of deduction under section 80P of the Act.

Learned counsel for the assessee submitted that there was no warrant for excluding any income out of the gross total income. The deductions as per sections 80C to 80U of the Act are to be allowed from "gross total income", which is defined under section 80B(5) of the Act as income computed before making any deduction under this Chapter. Total income was defined in Section 2(45) of the Act as income referred to under section 5 of the Act.

Statutory provisions referred to above clearly show that share income of the assessee is not liable to be excluded for purposes of gross total income and, therefore, rectification order under section 154 of the Act was erroneous and view taken by the Tribunal is in conformity with law. It is, however, made clear that we are not going into the question as to what is the scope of deductions under section 80P(2)(a) as the scope of the question referred is confined only to includibility of share income in gross total income and not about allowability or otherwise of deductions under section 80P(2)(a) of the Act.

In view of the above, the questions referred are answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 6, 2006
'gs'

(Rajesh Bindal)
Judge